



DECISION COVER SHEET

☒ **ACTION BY:** Public Members Only

☐ **ACTION BY:** All Members

To : BOARD MEMBERS

Date: June 14, 2018

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: PORTER AUTO GROUP, L.P. v. FCA US LLC
Protest Nos. PR-2534-17, PR-2535-17, PR-2536-17, PR-2537-17, PR-2555-18,
PR-2556-18, PR-2557-18 and PR-2558-18

TYPE: Vehicle Code section 3060 Termination

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: September 22, 2017 and March 14, 2018
- MOTIONS FILED: Respondent's "Motion to Dismiss Protests or, in the Alternative, for a Finding of Good Cause to Terminate Based on Uncontested Evidence"
- COUNSEL FOR PROTESTANT: Michael M. Sieving, Esq.
Attorney at Law
- COUNSEL FOR RESPONDENT: Michael S. Elvin, Esq.
Jack O. Snyder, Esq.
Barack Ferrazzano Kirschbaum & Nagelberg LLP

Robert E. Davies, Esq.
Mary A. Stewart, Esq.
Donahue Davies LLP
- EFFECT OF PROPOSED ORDER: The Proposed Order grants "Respondent's "Motion to Dismiss Protests or, in the Alternative, for a Finding of Good Cause to Terminate Based on Uncontested Evidence". The Proposed Order finds that the protests are moot and also that FCA has established good cause to terminate the franchises. The Order would overrule and dismiss all of the protests with prejudice.

Background Findings

- Porter Auto Group, LP (Porter) operated a dealership from leased premises located at 13411 Mono Way, Sonoma, California, with separate franchises for Chrysler, Dodge, Jeep and RAM vehicles. Porter failed to make its rent payments for the realty due April 2017 and

thereafter. In August 2017, the landlord obtained a judicial order of eviction and retook possession of the premises. Porter's flooring lender, Santander Bank, N.A. ("Santander") foreclosed on its security interests, and on March 26, 2018 obtained a default judgment for over three million dollars. Santander took possession of the inventory and other assets of Porter. The DMV, no later than October 2017, lists Porter's Dealer's License as "Not Valid".

- Porter last sold a vehicle in May 2017, has ordered no parts from FCA since July 2017 and last submitted a warranty claim in August 2017.
- Porter has no facilities from which to operate, has no inventory, has no Dealer's License and is insolvent.
- None of the above facts are contested by Porter. Porter's only assertion is by way of a declaration from Mr. Porter that he has four investors who are willing to provide sufficient capital to reopen the dealership. The declaration has no information as to the identity of the investors or when or where a dealership may reopen.

Mootness

- The ALJ concurred with FCA that the protests were moot. A Board order sustaining the protests would mean only that the franchises (the written agreements) could not be terminated however such an order would be meaningless as the dealership has been closed since at least August 2017 and there is no possibility of it reopening.

Good Cause to Terminate

- The ALJ also found that FCA, through declarations and exhibits, as a matter of law has established good cause to terminate the franchises taking into consideration the existing circumstances and all of the specific factors listed in Section 3061.

RELATED MATTERS:

- Related Case Law: *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626, 637
- Applicable Statutes and Regulations: Vehicle Code sections 331, 3050, 3060 and 3061 California Uniform Commercial Code section 1201(b)(23) U.S. Code Annotated section 101(32)